

Docket No. 94-33

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

JUL 12 1994

In the Matter of)
)
Further Forbearance from)
Title II Regulation for) GN Docket No. 94-33
Certain Types of Commercial)
Mobile Radio Service)
Providers)

To: The Commission.

**REPLY COMMENTS OF
WATERWAY COMMUNICATIONS SYSTEM, INC.**

Waterway Communications System, Inc. ("WATERCOM") respectfully submits this Reply to the Comments filed by the American Mobile Telecommunications Association, Inc. ("AMTA"), the AT&T Corporation ("AT&T"), the Cellular Telecommunications Industry Association ("CTIA"), and the NYNEX Corporation ("NYNEX") in response to the Notice of Proposed Rule Making adopted by the Commission in the above proceeding.^{1/}

WATERCOM is a licensee of an Automated Maritime Telecommunications System ("AMTS"), and pursuant to GN Doc. No. 93-252 is deemed to be a Commercial Mobile Radio Service ("CMRS") provider. WATERCOM filed initial Comments in this

^{1/} 59 Fed. Reg. 25432 (May 16, 1994).

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proceeding on June 27, 1994 urging the Commission to forbear from Title II regulation for AMTS providers with regard to Section 226 of the Act, which implements the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"). It is this issue which WATERCOM addresses in this Reply.

The Comments overwhelmingly support forbearance of TOCSIA to CMRS providers. However, a few commenters either take a neutral position or oppose forbearance of Section 226 of the Act.

CTIA takes a neutral position as to whether TOCSIA should be applied to CMRS providers. CTIA's Comments, however, reflect a somewhat inconsistent view, seemingly arguing for "consistent regulatory treatment of CMRS" while recognizing that the nature of each CMRS service would provide the basis for forbearance of the application of Section 226.^{2/} While WATERCOM generally supports forbearance regarding Section 226 for all CMRS providers, the Commission invited Comments in this proceeding addressed to forbearance with regard to the individual categories of CMRS providers. Accordingly, in its initial Comments,

^{2/} Comments, The Cellular Telecommunications Industry Association, pp. 6-7 (June 27, 1994).

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WATERCOM addressed the unique nature of AMTS service as rendered by WATERCOM, and urged that the maritime industry should be included in selective further forbearance of TOCSIA requirements. The maritime industry does not experience the same problems as traditional wireline common carrier services and thus does not fall within the scope of Section 226 of the Act.

AMTA asserts that forbearance from Section 226 is not in the public interest. Its rationale is based upon the premise that provision of operator services is a voluntary business decision.^{3/} This rationale, however, ignores the statutory standard that forbearance may be granted where enforcement is not necessary to protect consumers. Indeed, to follow AMTA's rationale to its logical conclusion, since all carrier operations are the result of voluntary business decisions, there would be no justification for the Commission to confer forbearance, or to waive any of its regulations. AMTA's position effectively nullifies the forbearance authority expressly conferred by Congress on the Commission and therefore is illogical. AMTA does not consider that the requirements of Section 226 generally apply to traditional wireline common carrier services, and

^{3/} Comments, American Mobile Telecommunications Association, Inc., p. 15 (June 27, 1994).

not to mobile services. In the mobile environment, affording the customer the opportunity for alternative routing via a different operator is a meaningless concept inasmuch as the customer must utilize the service of the mobile carrier to complete the call itself.

NYNEX, in its Comments, asserts that Section 226 protects consumers from unreasonably high rates and anti-competitive practices. This assertion is correct insofar as TOCSIA was implemented to remedy abuses by various operator service provider entities operating in the landline telephone network. However, TOCSIA was not specifically adopted to remedy problems that have not been shown to exist in the CMRS industry. In the mobile environment, providers must offer reasonable rates in order to stay competitive and maintain strong customer relations in the emerging CMRS industry.

AT&T provides only the most general statement of support for application of TOCSIA to CMRS providers; it offers no analysis of the impact of or benefit from TOCSIA in the CMRS environment. Ironically, while supporting TOCSIA application, AT&T has requested authority to forego having its access number made available through an independent CMRS provider/aggregator to avoid having to

provide compensation at a level appropriate to the CMRS provider.^{4/} Rather than platitudes concerning consumer safeguards, the standard for forbearance requires evaluation of benefits and burdens-- just as AT&T requested the Commission to consider in its October 12, 1993 Comments in MSD 92-14. Application of TOCSIA would impose substantial and unnecessary burdens on sub-categories of CMRS such as AMTS providers, and enforcement would create excessive economic burdens that outweigh any benefits. Unwarranted expenses would be required to retrofit networks and undoubtedly would generate customer confusion. The exorbitant costs of compliance undoubtedly would require certain classes of CMRS providers to abandon their public access service, which certainly runs contrary to serving the public interest.

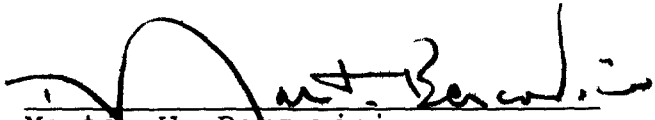
TOCSIA was intended to provide protection to telephone service consumers against the gouging which has been engaged in by various operator service provider entities which capture telephone traffic and block alternative access. As demonstrated by WATERCOM, GTE, Southwestern Bell and others in this proceeding the mobile service environment, and the

^{4/} See AT&T's Comments, GTE Service Corporation Petition for a Declaratory Ruling, MSD 92-14 (October 12, 1993).

AMTS environment in particular, are not subject to the type of abuse TOCSIA was designed to alleviate and, therefore, should be exempt from TOCSIA's requirements.

WHEREFORE, THE PREMISES CONSIDERED, Waterway Communications System, Inc., respectfully urges the Federal Communications Commission to FORBEAR from enforcement of Section 226 of the Communications Act with regard to the sub-category of Commercial Mobile Radio Service known as Automated Maritime Telecommunications Service.

Respectfully submitted,



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Due: July 12, 1994

CERTIFICATE OF SERVICE

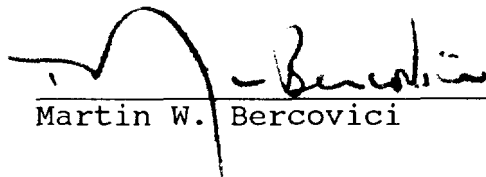
I, Martin W. Bercovici, hereby certify that the foregoing Reply Comments of WATERCOM were mailed, United States first class mail, postage prepaid, this 12th day of July, 1994, to the individuals named below:

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